

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SAMANTHA JOHNSON, APPELLANT,

v.

DIVISION OF EMPLOYMENT SECURITY, RESPONDENT.

DOCKET NUMBER WD71884

DATE: September 7, 2010

Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

James M. Smart, Jr., P.J., Mark Pfeiffer and Cynthia L. Martin, JJ.

Attorneys:

Samuel I. McHenry, Kansas City, MO, **for appellant.**

Larry R. Ruhmann, Jefferson City, MO, **for respondent.**

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SAMANTHA JOHNSON,

APPELLANT,

v.

DIVISION OF EMPLOYMENT SECURITY,

RESPONDENT.

No. WD71884

Labor and Industrial Relations Commission

Before Division One Judges: James M. Smart, Jr., Presiding Judge, Mark Pfeiffer and Cynthia L. Martin, Judges

Samantha Johnson was an hourly employee in a plant operated by Farmland Foods, Inc. She missed two days of work. She reported that her car had broken down and was being repaired, which resulted in transportation and child care problems.

Johnson applied for unemployment benefits. The Division of Employment Security determined that Johnson was disqualified from benefits because she "left work with the employer voluntarily without good cause attributable to the work or the employer."

Johnson appealed to the Division's Appeals Tribunal, which conducted a telephone hearing. The Appeals Tribunal issued its decision, again finding that Johnson was disqualified from benefits because she resigned her employment voluntarily.

Johnson appealed to the Labor and Industrial Relations Commission, which affirmed and adopted the Appeals Tribunal's decision.

Johnson now appeals to this court.

REVERSED.

Division One holds:

The sparse record shows that Ms. Johnson purported to want to keep her job. She called in her absences on these two days. She was *discharged* for excessive points under the attendance policy. It was error to determine that she voluntarily resigned her employment.

The employer did not prove misconduct or present the facts necessary to create a presumption of misconduct pursuant to section 288.050.3. Because the record suggests this case involved a "no fault" attendance policy, and because we know very little about any absences other than those on May 27 and 28 (when the claimant was absent due to

transportation difficulties), the evidence was insufficient to support a finding of misconduct.

The judgment of the Commission is reversed.

Per Curiam

September 7, 2010

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